Supreme Court, U.S.
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No. 05-1186 FEB 27 2006

OFFICE OF THE CLERK

In The Supreme Court of the United States

CATHERINE V. COLLINS,

Petitioner,

v.

BRUCE R. JAMES, Public Printer,
Unites States Government Printing Office,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI WITH APPENDIX

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Petition for Writ of Certiorari

I. Questions Presented for Review

Petitioner timely appealed from a Final Agency Decision instituting the decision of the Administrative Judge of the Equal Employment Opportunity Commission finding that the agency had not discriminated against Petitioner based on her disability and/or failure to grant a reasonable accommodation. Jurisdiction of U.S. District Court for the District of Columbia was invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343, and 1345. Petitioner contended that the action was authorized and instituted pursuant to Section 505 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794a, and Section 706 of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-5.

On or about October 29, 2004, Judge John D. Bates of the U.S. District Court for the District of Columbia, entered an order and memorandum opinion granting the Defendant's Motion to Dismiss for Lack of Jurisdiction, finding that the Government Printing Office was not subject to the provisions of the Rehabilitation Act of 1973. Petitioner timely filed her Notice of Appeal on or about November 26, 2004. Following the submission of briefs, the Court of Appeals for the District of Columbia Circuit entered judgment affirming the district court ruling.

The questions presented for review are:

(1) Whether the Government Printing Office, a legislative agency, is subject to the provisions of the Rehabilitation Act of 1973 under the terms of the Congressional Accountability Act; and

(2) Whether public policy dictates that the Government Printing Office be held subject to the provisions of the Rehabilitation Act of 1973 because it has expressly represented to its employees that it is subject to these provisions and that it abides by them.

II. List of Parties to the Proceeding

The following parties appeared before the courts below: Catherine Victoria Collins, Plaintiff; Bruce R. James, Public Printer, U.S. Government Printing Office. There are no intervenors or *amici* in this Court.

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V. Petition for a Writ of Certiorari

Petitioner Catherine Victoria Collins respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case.

VI. Opinions Below and Jurisdiction

The opinions of the District of Columbia Circuit (Petitioner's Appendix 1a) and district court (*Id.* 4a) are unpublished. The Court of Appeals issued its opinion on November 29, 2005. This Court has jurisdictions pursuant to 28 U.S.C. § 1254(1).

VII. Relevant Statutory Provision(s)

2 U.S.C. § 1302(a) provides in relevant part:

> *The following laws shall apply . . . to the legislative branch of the Federal Government . . . (3) The Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq.) . . . (10) The Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) . . .*

Other pertinent statutes include 42 U.S.C. §12209 and 29 U.S.C. §§ 705, 794a, as amended, which are included in Petitioner's Appendix at 47a, 10a, and 45a, respectively. 109 STAT. 8 (Jan. 23, 1995) is also included in Petitioner's Appendix at 92a.

VIII. Statement

1. On or about December 7, 2000, Plaintiff/Appellant filed a formal complaint of discrimination with the Equal Employment Opportunity (EEO) office within the U.S. Government Printing Office (GPO) following the unsuccessful resolution of her informal complaint. This complaint alleged discrimination based on handicap and the failure to provide a reasonable accommodation. Plaintiff requested a hearing before the Equal Employment Opportunity Commission (EEOC). GPO investigated Plaintiff's complaint and issued its Report of Investigation on or about April 8, 2002.

On or about May 27, 2003, the EEOC issued a Notice of Intent to Issue a Final Decision Without a Hearing to which both parties filed a response to the Commission's Notice. Each party also filed a reply to the other's response. On or about September 16, 2003, the Commission issued its decision, finding *inter alia*, that the GPO had not ***"failed in any of its obligations under the Rehabilitation Act."*** Pet. App. at 75a (emphasis added). The GPO issued its final agency decision, fully implementing the decision of the administrative judge. Appellant received the final agency decision on or about October 21, 2003. Appellant timely filed a civil action in the U.S. District Court for the District of Columbia on January 19, 2004.

2. GPO filed a motion to dismiss, alleging for the first time that the agency was not subject to the Rehabilitation Act of 1973 because it is not an

executive agency, but a legislative one. *See* Defendant's Motion to Dismiss, Pet. App. 61a. Nonetheless, Defendant presents itself to its employees as bound by the anti-discrimination policies set forth in the Rehabilitation Act. *See* EEO Complaint form (Pet. App. 72a); Sample GPO Job Vacancy Announcement (Pet. App. 85a). Its EEO office similarly processes complaints under the provisions of the Rehabilitation Act. *See* EEO Complaint form (Pet. App. 72a). The EEOC similarly processes the disability complaints of GPO employees. *See* EEOC Decision, dated September 16, 2003 (Pet. App. 75a). Consequently, it is not difficult to see why a GPO employee would believe himself or herself to be protected by the very federal laws they print and disseminate.

3. While GPO is indeed "an instrumentality of Congress," it is, in fact, subject to the provisions of the Rehabilitation Act of 1973, as well as the provisions of the Americans with Disabilities Act of 1990. The Congressional Accountability Act ("CAA") extended rights under the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973 to the legislative branch of the Federal Government:

> *The following laws shall apply . . . to the legislative branch of the Federal Government . . . (3) The Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq.) . . . (10) The Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) . . .*

2 U.S.C. §1302(a). Congressional intent to impose the prohibition against discrimination based on disability and the remedies for violation of that prohibition on the Government Printing Office seems clear. *See* Public Law 104-1, Title II, Part A, Sec. 201(c) Application to General Accounting Office, Government Printing Office, and Library of Congress, 109 STAT. 8 (January 23, 1995)(Pet. App. 92a).

These provisions became effective on January 23, 1995. Plaintiff filed her EEO complaint on or about December 7, 2000, after the effective date of the provisions extending anti-discrimination protection to the employees of Defendant. Therefore, subject matter jurisdiction not only existed at the time she filed her claim in 2000, but also at the time she filed the instant suit. *See Arnold v. District of Columbia*, 211 F. Supp. 144, 146 (D.D.C. 2002)(dismissal under 12(b)(1) is not appropriate where subject matter jurisdiction existed on the date that the lawsuit was filed).

4. GPO argued, and the lower court agreed, that *Barbour v. Jenifer*, No. 89-0657, Slip op. (D.D.C., June 25, 1990), had settled the issue as to whether the Government Printing Office was subject to the Rehabilitation Act. *See* Defendant's Motion to Dismiss, at 3 (Pet. App. 61a); Memorandum Opinion, at 1-2 (Pet. App. 4a). GPO's argument, however, ignored the fact that *Barbour v. Jenifer* pre-dated passage of the Congressional Accountability Act in 1995. Therefore, the court did not address the issue as to whether the Congressional Accountability Act

rendered the slip opinion in *Barbour v. Jenifer* as moot. Petitioner asserts in this matter that it does.

5. Public policy dictates that the GPO should be subject to the provisions of the Rehabilitation Act of 1973 because it has held itself out to its employees as being subject to the provisions of the Act. At the agency level, GPO processed Petitioner's claim as if it were subject to the Rehabilitation Act. The agency accepted Appellant's claim under the belief that it was subject to the disability discrimination laws. The agency investigated Petitioner's claim under the belief that it was subject to the disability discrimination statutes. Upon submission of the Report of Investigation, the agency instructed Petitioner to file a request for hearing with the Equal Employment Opportunity Commission. Neither during the discovery process or the summary judgment stage did the agency make the argument that it was not subject to the disability discrimination statutes. In his decision granting summary judgment, the administrative judge specifically stated as follows:

> *The Complainant has not proffered evidence from which I could conclude that the Agency discriminated against her, or failed in any of its obligations* ***under the Rehabilitation Act.***

Moss v. Government Printing Office, EEOC Case No. 100-A2-7124X, Agency Case No. 01-10 (September 16, 2003)(emphasis added)[Pet. App. 75a].